

**DISTRICT OF COLUMBIA**  
OFFICE OF ADMINISTRATIVE HEARINGS  
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MELVIN WILSON & RASHA WYNN,  
Tenants/Petitioners,

v.

ROBERT & SHARLON WILLIAMS,  
Housing Providers/Respondents

Case No.: RH-TP-06-28659

**FINAL ORDER**

**I. Introduction**

On June 13, 2006, Melvin Wilson and Rasha Wynn filed Tenant Petition (TP) 28,659 with the Rent Administrator, who heads the Rental Accommodations and Conversion Division (RACD) within the Department of Consumer and Regulatory Affairs. Tenants alleged that Respondents/Housing Providers had imposed rent increases that were illegal under the Rental Housing Act of 1985 and had taken retaliatory action against Tenants in violation of the Act. The petition was forwarded to the Office of Administrative Hearings (OAH) to hear and decide.<sup>1</sup>

On November 17, 2006, this administrative court issued a Case Management Order (CMO) directing the parties to appear for a hearing on December 19, 2006, at 1:30 p.m. A copy of the CMO was delivered to Respondents/Housing Providers by Priority Mail with Delivery Confirmation at the address given in the tenant petition. Shortly before the hearing Housing Providers requested a continuance, which was not granted. Petitioner Rasha Wynn appeared at

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<sup>1</sup> Under the OAH Establishment Act, D.C. Official Code § 2-1831.03, the OAH assumed jurisdiction of rental housing cases as of October 1, 2006. Tenant petitions that had not been subject to hearings before that date were transferred to OAH.

the hearing. Neither of the Housing Providers/Respondents appeared. Because Respondents failed to appear after having been given proper notice, I proceeded to take testimony and receive exhibits from Petitioners in Respondents' absence.

As set forth in the Analysis, Findings of Fact, and Conclusions of Law below, I find that Tenants have proven that Housing Providers charged a rent in excess of the rent ceiling allowed under the Rental Housing Act of 1985, substantially reduced services and facilities, intentionally ignored Tenants' complaints in a manner that reflects bad faith, and knowingly and willfully retaliated against them. Accordingly, I order Housing Providers to refund Tenants rent in the total amount of \$8,043.61, including interest and treble damages, to pay a fine of \$5,000 for willfully violating the Act, and to roll back Tenants' rent to \$201 per month until Housing Providers have repaired the apartment in compliance with the Housing Code.

## **II. Procedural Ruling on Housing Provider's Motion for a Continuance**

While this case presents a number of issues involving the District of Columbia's Rental Housing Act, the threshold issue is one of due process. The Housing Providers/Respondents failed to appear at the scheduled hearing after receiving proper notice. Although the Housing Providers did submit a request for a continuance, they did not obtain the Tenants' consent, did not file their motion in timely fashion, and gave only a cursory explanation of the reasons for their request.

On November 17, 2006, Housing Providers Robert and Sharlon Williams were served with a Case Management Order directing them to appear for a hearing at 1:30 p.m. on December 19, 2006. The Order advised the parties that they were required to contact the other party to request consent before requesting a change in the hearing date. The Order further stated in boldface type that: **“Only an Administrative Law Judge can change a scheduled hearing date.”** The CMO was mailed by Priority Mail with Delivery Confirmation to Housing Providers, Robert & Sharlon Williams, at 2907 Gainesville Street, S.E., Washington, DC 20020, the address given for Housing Providers in the tenant petition. The United States Postal Service web site confirmed delivery of the CMO to that address at 12:00 p.m. on November 25, 2006, Receipt No. 0306 1070 0001 1372 6993.

Housing Providers’ receipt of the CMO also was confirmed by their actions. On the late afternoon of December 15, 2006, with one business day remaining before the scheduled hearing, Housing Providers faxed a request for a change of hearing date to the Office of Administrative Hearings stating: “The scheduling date December 19, 2006 at 1:30 p.m. not good for us. Robert is do [sic] in [h]ospital that date. Sharlon has attorney to assist in the hearing [sic] will not be able until January 22-07 please have the motion hearing move [sic] to January 22-07 at 1:30 p.m. we mail a certified copy to Melvin Wilson and Rasha Wynn.”

Housing Providers made no attempt to contact OAH either before or after the hearing to determine whether their motion had been granted.

Ms. Wynn testified at the hearing that she had not received a copy of the Housing Providers’ request for a continuance. She also testified that Sharlon Williams had appeared and testified in the Landlord-Tenant Branch of the Superior Court of the District of Columbia that

same morning. She opposed any continuance of the hearing because it would delay resolution of her petition, cause her to lose time from her work and would force her to make additional arrangements for the care of her children.

A request for a continuance “is addressed to the sound discretion of an agency . . . and will be set aside only for an abuse of discretion.” *King v. District of Columbia Water and Sewer Auth.*, 803 A.2d 966, 968 (D.C. 2002) (quoting *Murphy v. A.A. Beiro Constr. Co.*, 679 A.2d 1039, 1043 (D.C. 1996)). *Accord*, *Pinzon v. A & G Props.*, 874 A.2d 347, 350 (D.C. 2005) (“The decision to grant or deny a continuance is entrusted to the sound discretion of the trial court, and its ruling will be reversed only for a clear abuse of discretion”). In ruling on a motion for a continuance an administrative law judge should consider “the reasons for the request for continuance, the prejudice that would result from its denial, the parties['] diligence in seeking relief, any lack of good faith, and any prejudice to the opposing party.” *King v. D.C. Water and Sewer Auth.*, 803 A.2d at 968 (quoting *Murphy v. A.A. Beiro Constr. Co.*, 679 A.2d at 1043). *Accord*, *DOH v. Walde*, 2003 D.C. Off. Adj. Hear LEXIS 45 at \*2 (Final Order July 2, 2003). In addition, the Office of Administrative Hearings itself has an interest in processing its cases on schedule. Last-minute continuances “upset an agency’s attempts to control its workload and to dispose of the cases before it expeditiously.” *DOH v. Walde*, 2002 D.C. Off. Adj. Hear. LEXIS 45 at \*2 (quoting *DOH v. Gormley Environmental Corp.* OAH No. I-02-12114 at 2 (Order, September 23, 2002) (quoting *Ammerman v. District of Columbia Rental Accommodations Comm’n*, 375 A.2d 1060, 1063 (D.C. 1977))).

Upon considering the factors that bear on Housing Providers’ last-minute motion for a continuance, I find that Housing Providers’ did not demonstrate good cause for a continuance and therefore their motion is denied. (1) Housing Providers were not diligent in seeking relief.

They waited until the eve of the hearing and made no serious effort to obtain Tenants' consent, either by telephone or by an in person request to Tenants who live in the same building as the Housing Providers.<sup>2</sup> (2) The prejudice to Housing Providers as a result of denial of the motion would be minimal if Housing Providers had chosen to appear at the hearing. Even if it were necessary for Sharlon Williams to be at the hospital, his brother could have appeared to defend against Tenants' charges or, in the alternative, to testify to the facts that would enable the Administrative Law Judge to determine whether a continuance was appropriate. (3) The circumstances of Housing Providers' request raise serious questions about their good faith. Although the motion stated that Sharlon Williams had a hospital appointment, there was no specific information about what the appointment involved or why this administrative court was not informed of the appointment previously. Moreover, Ms. Wynn testified that Sharlon Williams appeared and testified in the Superior Court of the District of Columbia on the morning of the hearing, indicating that there was no medical emergency. After they submitted the motion, Housing Providers made no attempt to follow-up to determine whether the motion had been granted. Although the motion stated that Housing Providers were retaining an attorney, no attorney has filed a notice of appearance on their behalf. (4) Postponing the hearing would have been prejudicial to Tenants and a serious inconvenience to this administrative court. Ms. Wynn would lose time from her job and have to rearrange a schedule that involves the care of four children. The court would have to send out new notices and expend additional judicial

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<sup>2</sup> OAH Rule 2812.5, 1 DCMR 2812.5, requires that a moving party "shall seek to obtain the consent of the other parties" before filing a non-dispositive motion. The CMO contained similar instructions. Housing Providers' faxed request for a continuance stated that a copy of the request had been mailed to Tenants by certified mail. But it made no mention of any attempt to obtain the Tenants' consent to a continuance. Since the Housing Providers' address is in the same building as Tenants, and Ms. Wynn testified that Housing Providers lived in the same building, Housing Providers could easily have sought consent from Tenants in person even if they did not have a phone number for them.

resources. On balance, Housing Providers' unsupported, tardy justification for a continuance does not constitute good cause to grant the request.

OAH Rule 2818.3, 1 DCMR 2818.3 provides, in part, that:

Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing . . . the presiding Administrative Law Judge may . . . enter an order of default in accordance with D.C. Superior Court Rule 39-I.<sup>3</sup>

Because the CMO setting the hearing date was mailed to Housing Providers' last known address and was confirmed to be delivered by the Postal Service, Housing Providers received proper notice of the hearing date. *Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985). Housing Providers' tardy request for a continuance confirms their receipt of notice of the hearing. Proceeding in Housing Providers' absence was therefore appropriate. *Cf. Borger Mgmt. v. Warren*, TP 23,909 (RHC Jun. 3, 1999) at 9 – 10 (affirming default judgment entered in favor of tenants where housing provider received notice of hearing but failed to attend).

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<sup>3</sup> Super Ct. Civ. R. 39-I(c) provides: "When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages."

## **II. Analysis of the Evidence**

### **A. The Lease**

The sole witness at the hearing was Tenant/Petitioner Rasha Wynn, who testified to the circumstances that caused her to file the tenant petition. Ms. Wynn also submitted photographs of the apartment that she had taken and certain documents, including certified records from the files of the Rent Administrator and reports of housing violations she obtained from a housing inspector who inspected the apartment.<sup>4</sup>

In February 2006, Ms. Wynn rented Apartment No. 104 at 2907 Gainesville Street, S.E., from Housing Providers Robert Williams and Sharlon Williams, for a monthly rent of \$500. Housing Providers did not ask Ms. Wynn to sign a lease at the time she rented the apartment, although she did sign a written lease in May, 2006. At the time she rented the apartment Ms. Wynn paid Housing Providers a security deposit of \$500, and an advance of two months rent for February and March 2006. Ms. Wynn, her fiancé, Melvin Wilson, and Ms. Wynn's children occupied the apartment in February and continued to live there through the date of the hearing, paying the monthly \$500 rent either to Housing Providers or into the registry of the Landlord/Tenant Branch of the Superior Court of the District of Columbia.<sup>5</sup>

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<sup>4</sup> A list of Petitioners' exhibits is attached as Appendix A below. All of Petitioners' exhibits were admitted into evidence.

<sup>5</sup> Ms. Wynn and the Respondents are also parties to an action in the Superior Court of the District of Columbia. Ms. Wynn testified that the judge in that action directed Tenants to pay the monthly \$500 rent payments into the court registry.

## **B. Housing Provider's Demand of Rent in Excess of the Rent Ceiling**

The permissible rent that may be charged by a housing provider for any rental unit that is not exempt from coverage is prescribed by the Rental Housing Act of 1985, D.C. Official Code § 42-3501.01, *et. seq.*, and regulations promulgated by the Rental Housing Commission, 14 DCMR 4100 *et. seq.*, 14 DCMR 4200 *et. seq.* Housing providers, including new owners, are required to register all rental units with the Rent Administrator. D.C. Official Code § 42-3502.05(f); 14 DCMR 4101, 4102. The housing provider must then “perfect” any increase in the rent ceiling by filing one of two documents with the Rent Administrator: (1) An amended registration statement for changes involving vacant rent increases or changes in services or facilities. D.C. Official Code § 42-3502.05(g); (2) A Certificate of Election of Adjustment of General Applicability under 14 DCMR 4204.10, to perfect an annual adjustment of general applicability based on the percentage increase prescribed annually by the Rent Administrator. *See* D.C. Official Code § 42-3502.06(b).

A housing provider who fails to perfect an adjustment in the rent ceiling through an appropriate timely filing with the Rent Administrator forfeits the right to the adjustment. *Sawyer Prop. Mgmt. v. District of Columbia Rental Hous. Comm’n.*, 877 A.2d 96, 100 (2005). Consequently, the maximum rent that a housing provider may charge is limited to the amount of the rent ceiling reflected in properly perfected filings with the Rent Administrator.<sup>6</sup> *See* 14 DCMR 4204.2, 4204.9.

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<sup>6</sup> Rent ceilings were abolished by the Rent Control Reform and Amendment Act of 2006, which amended the Rental Housing Act of 1985 to provide that permissible rent ceilings would be based on the present rent charged for a housing unit rather than the rent ceiling. *See* 53 D.C. Reg. 4489 (Jun. 23, 2006). The amendment was effective as of August 5, 2006, and therefore does not affect the Tenants’ petition here. *See* 53 D.C. Reg. 6688 (Aug. 18, 2006).

Ms. Wynn submitted into evidence certified records of the Rent Administrator showing that the rent ceiling for Tenants' apartment in June, 1995, was \$381. Petitioners' Exhibit (PX ) 109. An amended registration form was filed in August, 1996, designating Robert and Sharlon Williams as the new owners. PX 110. Ms. Wynn testified that the Rent Administrator's files contained no filings by the Housing Providers after the change of ownership.

Because the documents on file with the Rent Administrator show that the rent ceiling for the apartment is \$381 per month, that amount is the maximum rent that the Housing Provider is permitted to charge. Since Ms. Wynn paid \$500 per month in rent from February, 2006 through December, 2006, I will award a rent refund of \$119 per month for the ten months and nineteen days between the date of commencement of the lease and the date of the hearing, or \$1262.59. *See Jenkins v. Johnson*, TP 23,410 (RHC Jan. 4, 1995) at 9 (rent refunds may be awarded through the date of the hearing if supported by the evidence).

### **C. Housing Providers' Substantial Reduction in Services and Facilities**

Ms. Wynn testified that Sharlon Williams promised her at the time she moved in that Housing Providers would make extensive repairs to the apartment. These included providing new cabinets and a new refrigerator in the kitchen, eliminating mold and fungus throughout the apartment, providing a new tub in the bathroom, fixing the wash basin so it would work, repairing a broken window in the living room, furnishing blinds, fixing broken light fixtures in the kitchen, and painting a deck.

When Ms. Wynn and Mr. Wilson moved into the apartment in the second week in February none of the promised repairs had been made. Ms. Wynn began complaining to Sharlon and Robert Williams about needed repairs in the bathroom at the end of February 2006, and continued her complaints about the need for repairs to the bathroom, kitchen, and bedrooms until she filed this petition in June 2006.

In response to complaints from Ms. Wynn, a housing inspector, Phil Latson, Jr., inspected the property on June 6, 2006. He prepared two notices of violation, Nos. 96620-1 and 87577-15. The notices charged 15 violations of the District of Columbia Housing Code, with proposed fines totaling \$8,000. Notice No. 96620-1 required Housing Providers to fix a drain pipe leak and damp floor in the kitchen and to replace a defective smoke detector within one day. Petitioner's Exhibit (PX) 100. Notice No. 87577-15 required Housing Providers to correct 12 other violations within 15 days. PXs 102, 103.<sup>7</sup>

Housing Providers fixed the pipe in the kitchen in June 2006.<sup>8</sup> They did not correct any of the other violations that were cited in the housing inspector's notices of violation. Ms. Wynn testified that, as of the date of the hearing, Housing Providers had made no repairs except to fix the pipe.

Tenants' apartment also was infested with rats from the time they moved in until the time of the hearing. A photograph of a rat in the apartment was received in evidence. PX 118.

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<sup>7</sup> A list of the reported violations is attached as Appendix B.

<sup>8</sup> Ms. Wynn testified that the pipe was fixed in June after the housing inspector issued the Notice of Violation on June 13. I assume a repair date of June 15 in the calculations of the rent ceiling reduction and interest that follow.

Photographs received in evidence documented the following improper conditions:

- (a) Extensive mold, mushrooms, and fungus in the kitchen, bathroom, hallways, and other parts of the apartment. PXs 122, 127, 136, 137, 138.
- (b) Cracks and serious leaks in the bathroom ceiling. PXs 112, 121.
- (c) A bathroom tub filled with stagnant water because the drain was defective. PX 115.<sup>9</sup>
- (d) Chipped tiles and missing tiles in the bathroom with the medicine cabinet coming out of the wall. PXs 131, 132.
- (e) A bathroom window covered with paint with a rusted frame that allowed water to seep in from outside and a broken lock. PXs 133, 134.
- (f) Large holes in the kitchen ceiling. PX 116, 135.
- (g) Exposed light fixtures in the kitchen (PX 123) and dining room (PX 119).
- (h) A broken light fixture in the kitchen. PX 123.
- (i) A broken window in the living room. PX 114.
- (j) Numerous missing floor tiles in the dining room. PX 124.
- (k) A defective window with a broken lock in the rear bedroom. PXs 125, 126.
- (l) Missing floor tiles in the rear bedroom. PX 127.
- (m) Missing floor tiles in the hallway. PX 129.

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<sup>9</sup> Ms. Wynn testified that she had never been able to take a bath in the apartment.

Where services or facilities in a rental unit are “substantially . . . decreased,” the rent ceiling for the unit shall be decreased “to reflect proportionally the value of the change in services and facilities.” D.C. Official Code § 42-3502.11. Where violations continue following the date that the tenant’s petition is filed, “the remedy of refund for [the] improper rent adjustment may go up to the date the record closed, which is usually the hearing date.” *Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 46, *aff’d on other grounds*, 866 A.2d 41 (D.C. 2004) (quoting *Jenkins v. Johnson*, TP 23,410 (RHC Jan. 4, 1995) at 6). A substantial decrease in services and facilities includes situations where, as here, the Housing Provider provides a rental unit that is in violation of the Housing Code at the time the tenant moves in and fails to remove the violations. *See Mudd v. Davis*, TP 12,036 (RHC Apr. 23, 1987) at 61 (“A landlord is never free to offer property on an ‘as is’ basis when that phrase means taking subject to substantial housing code violations”) *aff’d*, *Mudd v. District of Columbia Rental Hous. Comm’n*, 546 A.2d 440 (D.C. 1988).

The evidence establishes that the services and facilities in Tenants’ rental unit were substantially decreased from February 1, 2006, the date that her lease began, through December 19, 2007, the date of the hearing. The Rental Housing Commission has held consistently that the hearing examiner, now the Administrative Law Judge, is not required to assess the value of a reduction in services and facilities with “scientific precision,” but may instead rely on his or her “knowledge, expertise and discretion as long as there is substantial evidence in the record regarding the nature of the violation, duration, and substantiality.” *Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786, (RHC Aug. 1, 2000) at 8 (*citing Calomiris v. Misuriello*, TP 4809 (RHC Aug. 30, 1982) and *Nicholls v. Tenants of 5005, 07, 09 D Street, S.E.*, TP 11,302 (RHC Sept. 6, 1985)). It is not necessary for an Administrative Law Judge to receive expert testimony or

precise evidence concerning the degree to which services and facilities have been reduced in order to compensate Tenants for the value of the reduced services. “[E]vidence of the existence, duration and severity of a reduction in services and/or facilities is competent evidence upon which the [judge] can find the dollar value of a rent roll back.” *George I. Borgner, Inc. v. Woodson*, TP 11,848, (RHC, June 10, 1987) at 11.

I compute the value of the Housing Providers’ reduction in services and facilities as follows

**Schedule A, Substantially Reduced Services and Facilities**

<b>Service/Facility</b>	<b>Duration</b>	<b>Severity</b>	<b>Value</b>	<b>No. of Months</b>	<b>Total Reduction</b>
Leaking Kitchen Drainpipe	2/1/06 – 6/15/06	Very Serious	\$35 per month	4.5	\$157.50
Damp Floor in Kitchen	2/1/06 – 6/15/06	Serious	\$15 per month	4.5	\$67.50
Defective Smoke Detector	2/1/06 – 12/19/06	Very Serious	\$25 per month	10.61	\$265.25
Damp Floor in Rear Bedroom	2/1/06-12/19/06	Serious	\$15 per month	10.61	\$159.15
Missing Tiles and Peeling Paint in Bathroom	2/1/06 – 12/19/06	Serious	\$15 per month	10.61	\$159.15
Broken Tub and Washbasin in Bathroom	2/1/06 – 12/19/06	Very Serious	\$35 per month	10.61	\$371.35
Dampness, Mold, and Fungus in Rear Bedroom and Living Room	2/1/06 – 12/19/06	Very Serious	\$25 per month	10.61	\$265.25
Rat Infestation	2/1/06 – 12/19/06	Very Serious	\$25 per month	10.61	\$265.25

Service/Facility	Duration	Severity	Value	No. of Months	Total Reduction
Defective Light Fixtures in Kitchen	2/1/06 – 12/19/06	Very Serious	\$25 per month	10.61	\$265.25
Broken Windows in Front and Rear Bedrooms	2/1/06 – 12/19/06	Serious	\$15 per month	10.61	159.15
Total Value of Reduced Services	2/1/06 – 12/19/06				\$2,134.80

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#### **D. Treble Damages**

The Rental Housing Act of 1985 provides for an award of treble damages where a housing provider acts in bad faith:

Any person who knowingly . . . substantially reduces or eliminates related services previously provided for a rental unit shall be held liable . . . for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the [Administrative Law Judge] determines.

D.C. Official Code § 42-3509.01(a).

A finding of bad faith requires “egregious conduct, dishonest intent, sinister motive, or a heedless disregard of duty.” *Vicente v. Jackson*, TP 27,614 (RHC Sept. 19, 2005) at 12 (citing *Quality Mgmt. v. District of Columbia Rental Hous. Comm'n*, 505 A.2d 73, 75 (D.C. 1986) and *Third Jones Corp. v. Young*, TP 20,300 (RHC Mar. 22, 1990)).

Considering this standard, I must conclude that Housing Providers’ heedless disregard of their duty to make vitally necessary repairs over a period of more than ten months reflected bad faith. The bad faith is manifest from the following circumstances: (1) Sharlon Williams promised Ms. Wynn that he would make specific repairs to the apartment before she agreed to

lease the unit. None of these repairs were made. (2) The condition of the apartment, as described in Ms. Wynn's testimony and as documented in the photographs and the housing inspector's notices of violation, is shocking and patently unfit for habitation. No reasonable housing provider could have failed to recognize the necessity for immediate repairs to make the apartment habitable. (3) Housing Providers lived in the same building as Tenants and could easily have investigated Tenants' complaints. Their failure to respond to the complaints reflects an intentional and callous disregard of their legal responsibilities. (4) Housing Providers' only repair, fixing the pipe in the kitchen, was provoked by the housing inspector's notices of violation. The Housing Providers ignored 14 other violations that were reported by the housing inspector.

Housing Providers' bad faith is also evidenced by a further incident that reflects egregious conduct, dishonest intent, and sinister motive towards Tenants. In mid May, 2006, a social worker visited Ms. Wynn and inspected the apartment. Ms. Wynn testified that the social worker was disturbed by the condition of the apartment and reported the condition to the Department of Consumer and Regulatory Affairs and to the police. On May 18, 2006, two police officers arrived at the premises to talk to the building owners. The officers asked Ms. Wynn if she knew where they could find the owners. Ms. Wynn told the officers she did not know where they were.

Two days later, on May 20, a stranger assaulted Ms. Wynn with a knife as she was leaving the apartment. Mr. Wilson intervened and was stabbed multiple times in the ensuing fight. Photographs of Mr. Wilson's wounds were admitted into evidence. PX 107, 108. Sharlon Williams's daughter told Ms. Wynn's sister that the assailant was Robert Oliver, the brother of

the daughter's boyfriend. The daughter said that Sharlon Williams asked Mr. Oliver to punish Ms. Wynn in the belief that she was the one who complained to the police.

Ms. Wynn testified that, on June 13, 2006, in the presence of Inspector Latson, Sharlon Williams confirmed that he arranged for Mr. Oliver to attack Ms. Wynn. Mr. Williams stated: "I might have missed you the first time, but I'm going to get you this time. You're going to die."

Although the Housing Providers' heedless disregard of their duty to correct serious housing code violations is itself sufficient evidence of bad faith, their calculated assault on the Tenants confirms that their refusal was part of a pattern of "egregious conduct, dishonest intent, and sinister motive."

The Rental Housing Act does not specify whether treble damages must be linked only to those elements of damages that arise out of the Housing Providers' bad faith or whether the presence of bad faith justifies trebling the entire amount by which the rent exceeds the applicable rent ceiling. *See* D.C. Official Code § 42-3509.01. But the Rental Housing Commission seems to be of the view that treble damages should apply only to the portion of damages that arose out of bad faith acts. Thus, the Rental Housing Commission approved a hearing examiner's segmentation of treble damage awards so that only the only damages that were trebled were those directly linked to the Housing Provider's bad faith. *See Redmond v. Majerle Management, Inc.*, TP 23,146 (RHC Jun. 14, 1999) at 32 – 34, *aff'd in pertinent part, Majerle v. District of Columbia Rental Hous. Comm'n*, 768 A.2d 1003 (D.C. 2001) (trebling award of damages for a bad faith increase of rent above the rent ceiling while not trebling damages for substantial reduction in services and facilities for which there was no finding of bad faith). Therefore I will treble only the damages of \$2,134.80 that result from the Housing Providers' decrease in services

and facilities. Because there is no evidence that Housing Providers acted in bad faith when they demanded and collected a rent that was in excess of the \$381 rent ceiling that was documented in the filings with the Rent Administrator, the damages attributable to the rent overcharge, \$1,262.59 will not be trebled.

### **E. Roll Back**

Where an Administrative Law Judge finds that a tenant's rent exceeds the permissible rent ceiling, the Rental Housing Act of 1985 provides that the Housing Provider shall be required to refund the tenant the amount by which the rent exceeds the applicable rent ceiling. In addition, where services and facilities are reduced, a judge may roll back the rent until they are restored to the appropriate level. D.C. Official Code § 42-3509.01(a); 14 DCMR 4217.1(c). *See Afshar v. District of Columbia Rental Hous. Comm'n*, 504 A.2d 1105, 1108 (D.C. 1986) (explaining the distinction between the rent ceiling reduction, which limits the rent that the Housing Provider may charge, and the roll back, which “without triggering a rent-ceiling reduction . . . serves to bring the rent into line with the services the landlord actually provides”).

The cases applying the roll back remedy do not discuss whether it must be prospective only, or whether a roll back may be ordered retroactively. *See, e.g., Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 48 (ordering a roll back of rent but not specifying when it would take effect). The Court of Appeals' decision in *Afshar* describes the roll back as “a mysterious creature” that “appears to be an equitable measure akin to the reformation of a

contract.” The Court noted that the roll back “directly affects the terms of the existing lease,” and “alters the amount of rent on which the landlord and the tenant have already agreed.” 504 A.2d at 1108. It follows that this administrative court may apply the roll back retroactively to reform the lease as of the date of the hearing.

Accordingly, I direct Housing Providers here to roll back Ms. Wynn’s current \$500 rent to \$201, effective as of January, 2007. This represents the \$381 permissible rent ceiling documented in filings with the Rent Administrator, PX 109, reduced by \$180, the monthly value of Housing Providers’ substantial reduction in services and facilities. The roll back will continue until Housing Providers restore the services and facilities to a level that complies with the Housing Code.<sup>10</sup>

#### **F. Retaliation**

The Rental Housing Act of 1985 prohibits a housing provider from taking “any retaliatory action against any Tenants who exercise any right conferred upon the Tenants by this chapter.” Retaliatory action includes action that is intended to “violate the privacy of the Tenants, harass . . . or any other form of threat or coercion.” D.C. Official Code § 42-3505.02(a). *See also* 14 DCMR 4303.2 (“Retaliatory action shall include . . . (d) Any other form of threat or coercion.”) The Housing Providers’ commissioning of Mr. Oliver to assault Ms. Wynn and Mr. Wilson, an intentional assault confirmed by Sharlon Williams’s own admission, clearly is a “form of threat or coercion” that constitutes retaliation under the Act.

The Rental Housing Act provides that if a tenant requests repairs necessary to bring a rental unit into compliance with the housing regulations or reports suspected violations to the

<sup>10</sup> Tenants are being compensated for the Housing Providers’ reduction in services and facilities prior to December 19, 2006, the date of the hearing through the rent refund discussed above.

District of Columbia Government within six months of when the housing provider takes any of the actions proscribed in the Act, retaliation is presumed and may only be rebutted by clear and convincing evidence adduced by the housing provider. D.C. Official Code § 42-3505.02(b). Ms. Wynn testified that she and Mr. Wilson were assaulted and coerced within six months of her continuing complaints to Housing Providers about housing code violations in the apartment. Housing Providers failed to rebut the presumption of retaliation that is established by this testimony through clear and convincing evidence. Accordingly, Housing Providers' assault on Tenants is presumed to be retaliatory under the Act.

### **G. Willful Violation**

The Rental Housing Act does not provide for an award of damages to a tenant who is subject to retaliation. But in certain circumstances the Act allows for the imposition of a fine against the housing provider. The Act provides that: "Any person who wilfully [sic] . . . (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation." D.C. Official Code § 42-3509.01(b). The District of Columbia Court of Appeals and the Rental Housing Commission have affirmed the imposition of fines for retaliation. *See Revithes v. District of Columbia Rental Hous. Comm'n*, 536 A.2d 1007, 1021 (D.C. 1987); *Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786, (RHC Aug. 1, 2000) at 8; *Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC June 4, 1999) at 44

Patently Housing Providers' commissioning of a violent and potentially deadly assault on Tenants is willful within the meaning of the Act. *See Miller v. District of Columbia Rental*

*Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005) (holding that a fine may be imposed where the Housing Provider “intended to violate or was aware that it was violating a provision of the Rental Housing Act”); *Quality Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n*, 505 A.2d 73, 76. n.6 (D.C. 1986) (holding that “willfully” implies intent to violate the law and a culpable mental state). I have found that Housing Providers’ assault on Tenants and their continued refusal to make needed repairs reflected a culpable mental state and a conscious intent to violate the Rental Housing Act. In view of the deplorable condition of the apartment, the savagery of the assault, and the seriousness of the wounds inflicted on Mr. Williams, I will impose the maximum permissible fine of \$5,000.

#### **H. Interest**

The Rental Housing Commission Rules implementing the Act provide for the award of interest on rent refunds, at the interest rate used by the Superior Court of the District of Columbia from the date when service was interrupted to the date of issuance of the decision. 14 DCMR 3826.1 – 3826.3; *Marshall v. District of Columbia Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). To compute the interest that is due, the elements of the rent refund need to be broken down into monthly components.

Schedule B, below, computes the interest due on each month’s overcharge at the six percent interest rate set for judgments of the Superior Court of the District of Columbia on the date of the hearing. The total monthly refund consists of two components: (1) the overcharge resulting from Housing Provider’s reduction in services and facilities, which is subject to treble damages; (2) the fixed monthly overcharge of \$119 that results from the Housing Provider’s

charging a monthly \$500 rent that was in excess of the \$381 rent ceiling reflected in the documents on file with the Rent Administrator.

The amount of the services overcharge decreased on June 16, 2006, from \$230 to \$180 because, as shown in Schedule A, the Housing Providers fixed the pipe in the kitchen, increasing the computed value of the services and facilities by \$50 per month. (I determined that the value of the reduced services and facilities attributable to the broken kitchen pipe was \$35 per month, and the value of the reduction attributable to the damp kitchen floor, caused by the broken pipe, was \$15 per month, a total reduction of \$50 per month beginning June 16, 2006.) Thus the \$230 reduction is used as the basis of computation for the four and one half months from February 1 through June 15, 2006. The \$180 reduction is used as the basis for the nine months and one half beginning on June 16, 2006 through April 30, 2007, the date of this decision.

#### **Schedule B, Interest Calculation**

<b>Month Rent Was Paid</b>	<b>Services Overcharge</b>	<b>Treble Services Overcharge</b>	<b>Total Monthly Refund</b>	<b>Monthly Interest</b>	<b>Number of Months Interest Due</b>	<b>Interest Due</b>
Feb. -2006	\$230	\$690	\$809	\$4.05	15	\$60.68
Mar. 2006	\$230	\$690	\$809	\$4.05	14	\$56.63
Apr 2006	\$230	\$690	\$809	\$4.05	13	\$52.59
May 2006	\$230	\$690	\$809	\$4.05	12	\$48.54
Jun. 1 – Jun. 15, 2006	\$115	\$345	\$404.50	\$1.01	11	\$11.12
Jun. 16 – Jun. 30, 2006	\$90	\$270	\$329.50	\$.82	11	\$9.06
Jul. 2006	\$180	\$540	\$659	\$3.30	10	\$32.95

<b>Month Rent Was Paid</b>	<b>Services Overcharge</b>	<b>Treble Services Overcharge</b>	<b>Total Monthly Refund</b>	<b>Monthly Interest</b>	<b>Number of Months Interest Due</b>	<b>Interest Due</b>
Aug. 2006	\$180	\$540	\$659	\$3.30	9	\$29.66
Sep. 2006	\$180	\$540	\$659	\$3.30	8	\$26.36
Oct. 2006	\$180	\$540	\$659	\$3.30	7	\$23.07
Nov. 2006	\$180	\$540	\$659	\$3.30	6	\$19.77
Dec. 1 – Dec. 19, 2006	\$110.32	\$330.97	\$403.90	\$1.24	5	\$6.20
<b>Total</b>						<b>\$376.62</b>

### **III. Findings of Fact**

1. In February, 2006, Tenant Rasha Wynn rented an apartment, No. 104, at 2907 Gainesville Street, S.E. from Housing Providers Robert and Sharlon Williams. Ms. Wynn occupied the apartment with her fiancé, Melvin Wilson, and her children through the date of the hearing, December 17, 2006.<sup>11</sup>

2. Ms. Wynn paid \$500 in rent per month for the apartment from February, 2006, through December 2006. The rent was either paid to the Housing Providers or into the registry of the Landlord/Tenant Branch of the Superior Court of the District of Columbia. The amount of rent was confirmed in a written lease executed by Ms. Wynn in May 2006.

3. At the time Housing Providers rented the apartment to Tenants the rent ceiling for the apartment was \$381, as evidenced by a Certificate of Election of Adjustment of General Applicability, filed with the Rent Administrator in 1995. PX 109. There were no subsequent filings to take or perfect any increase in this rent ceiling.

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<sup>11</sup> Ms. Wynn testified that at various times some of the children had to stay with relatives because the apartment was unhealthy.

4. Housing Provider Sharlon Williams promised Ms. Wynn at the time she moved in that Housing Providers would make a number of repairs to the apartment. These included providing new cabinets and a new refrigerator in the kitchen, eliminating mold and fungus throughout the apartment, providing a new tub in the bathroom, fixing the wash basin so it would work, repairing a broken window in the living room, furnishing blinds, fixing broken light fixtures in the kitchen, and painting a deck.

5. At the time Tenants occupied the apartment the services and facilities in the apartment were substantially reduced below the minimum level required by the housing code, as set forth in Schedule A above. With the exception of the leaking pipe in the kitchen, which was repaired in June, 2006, and the accompanying damp floor in the kitchen, the reductions in services and facilities listed in Schedule A continued at least until the date of the hearing, December 17, 2006.

6. Beginning at the end of February, 2006, and continuing through June, 2006 and beyond, Tenants complained about the condition of the apartment and Housing Providers' failure to fix the defective conditions listed in Schedule A. With the exception of the repair to the leaking pipe, which was made at the insistence of a housing inspector, Housing Providers made no repairs.

7. On June 7, 2006, housing inspector Phil Latson, Jr. inspected the housing accommodation. On June 13, 2006, he prepared two Notices of Violation, No. 96620-I (PX 102) and No. 87577-15 (PX 103). A list of these violations is attached as Appendix B.

8. Photographs introduced into evidence, supported by Ms. Wynn's testimony, established numerous other defects in the condition of the apartment constituting a substantial reduction in the minimum level of services required for the apartment to be habitable. These

conditions included: (a) extensive mold, mushrooms, and fungus in the kitchen, bathroom, hallways, and other parts of the apartment (PXs 122, 127, 136, 137, 138); (b) cracks and serious leaks in the bathroom ceiling (PXs 112, 121); (c) a bathroom tub filled with stagnant water because the drain was defective (PX 115); (d) chipped tiles and missing tiles in the bathroom with the medicine cabinet coming out of the wall (PXs 131, 132); (e) a bathroom window covered with paint with a rusted frame that allowed water to seep in from outside and a broken lock (PXs 133, 134); (f) large holes in the kitchen ceiling (PX 116, 135); (g) exposed light fixtures in the kitchen (PX 123) and dining room (PX 119); (h) a broken light fixture in the kitchen (PX 123); (i) a broken window in the living room (PX 114); (j) numerous missing floor tiles in the dining room (PX 124); (k) a defective window with a broken lock in the rear bedroom (PXs 125, 126); (l) missing floor tiles in the rear bedroom (PX 127); (m) missing floor tiles in the hallway. PX 129.

9. Housing Providers were aware of the serious nature of the defects and the housing code violations in the apartment as evidenced by Tenants frequent complaints and the Notices of Violation issued by the housing inspector. Housing Providers' failure to remedy the defects and cure the Housing Code violations reflected a dishonest intent, sinister motive, and a heedless disregard of their obligations under the Housing code and the Rental Housing Act. By contrast, there is no evidence of dishonest intent, sinister motive, or heedless disregard by Housing Providers in demanding and collecting a \$500 monthly rent that exceeded the \$381 rent ceiling documented in filings with the Rent Administrator.

10. On May 20, 2006, Robert Oliver, the brother of Sharlon Williams's daughter's boyfriend, assaulted Ms. Wynn and Mr. Wilson with a knife, seriously wounding Mr. Wilson.

The assault was arranged by Sharlon Williams to punish Tenants in the belief that they had complained to the police about the condition of the apartment.

11. On June 6, 2006 in the presence of Ms. Wynn and housing inspector Latson, Sharlon Williams acknowledged that he had arranged for the assault on Tenants and threatened Ms. Williams, stating: “I might have missed you the first time, but I’m going to get you this time. You’re going to die.”

#### **IV. Conclusions of Law**

1. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501-510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399. As of October 1, 2006, the Office of Administrative Hearings has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Code Title 2, § 1831.03.

2. Housing Providers/Respondents Robert and Sharlon Williams failed to obtain Tenants’ consent to their motion for a continuance as required by OAH Rule 2812.5, and failed to demonstrate good cause for a continuance.

3. Housing Providers received proper notice of the hearing under the Rental Housing Act, D.C. Official Code § 42-3502.16(c), and the notice conformed to the constitutional requirements for due process. Therefore it was appropriate to proceed with the hearing in their absence.

4. The rent ceiling for Tenants' housing accommodation was \$381 per month. Tenants are entitled to a refund of \$119 per month, representing the difference between the permissible rent ceiling and the rent of \$500 per month that Housing Providers demanded and Tenants paid. The total value of the refund for the ten months and nineteen days between February 1, 2006 and December 19, 2006, when the hearing was held, is \$1,262.59.

5. Tenants are entitled to a further refund of \$2,134.80 in consequence of the substantial reduction in services and facilities in the housing accommodation between February 2006 and December 2006.

6. The record establishes that Housing Providers acted in bad faith when they substantially reduced the services and facilities in Tenants' rental unit. The bad faith is evidenced by Housing Providers' contumacious refusal to make vitally needed repairs despite repeated complaints from Tenants, Housing Providers' refusal to correct serious violations of the Housing Code charged by Inspector Latson, and Housing Providers' attempt to threaten and coerce Tenants by engaging Mr. Oliver to assault them. Therefore Tenants' refund is subject to treble damages for the portion of the award that is attributable to the substantial reduction in services and facilities, which will be augmented to \$6, 404.40.

7. The Housing Providers threats and coercion of Tenants, including, but not limited to their assault on Tenants, are an act of retaliation under the Rental Housing Act. The threats were willful, as demonstrated by Sharlon Williams' admission that he intended to murder Ms. Wynn.

8. Tenants are entitled to an award of rent refunds and damages as follows:

Refund for rent charged in excess of rent ceiling reflected in filings with the Rent Administrator (\$500 - \$381 = \$119 x 10.61 months)	\$1,262.59
Refund for substantially reduced services and facilities, February through December, 2006	\$2,134.80
Treble Damages (\$2,134.80 x 3)	\$6,404.40
Total refund for rent overcharges (\$6,404.40 + \$1,262.59)	\$7,666.99
Interest	\$376.62
Total award to Tenants (treble damages + interest)	\$8,043.61

In addition, I am imposing a fine of \$5,000 against the Housing Providers for their illegal retaliatory action and I am directing a roll back of Tenants' rent to \$201 per month, effective as of January 1, 2007.

## V. Order

Accordingly, it is this **30<sup>th</sup>** day of **April, 2007**:

**ORDERED**, that Housing Providers, Robert and Sharlon Williams, pay Tenants, Melvin Wilson and Rasha Wynn, **EIGHT THOUSAND AND FORTY-THREE DOLLARS AND SIXTY-ONE CENTS (\$8,043.61)**; and it is further

**ORDERED**, that Housing Providers, Robert and Sharlon Williams, shall pay a fine of **FIVE THOUSAND DOLLARS (\$5,000)** in accordance with the attached instructions within 30 days of the mailing date of this Order; and it is further

**ORDERED**, that Housing Providers may not charge Tenants a monthly rent in excess of **TWO HUNDRED AND ONE DOLLARS (\$201)** per month, as of January 1, 2007, until all

housing code violations noted in Notice Nos. 96620-1 and 87577-15 have been corrected. Housing Providers may not charge Tenants a monthly rent in excess of **THREE HUNDRED AND EIGHTY-ONE DOLLARS (\$381)** per month until Tenants' building is properly registered and Housing Providers have complied with all provisions of the Rental Housing Act of 1985, as amended; and it is further

**ORDERED**, that either party may move for reconsideration of this Final Order within ten days under OAH Rule 2937; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Order are stated below.

/s/  
Nicholas H. Cobbs  
Administrative Law Judge

## Appendix A

### Exhibits in Evidence

<b>Exhibit No.</b>	<b>Description</b>
100	Housing Violation Notice No. 96620-1
101	Void
102	Housing Violation Notice No. 87577-15 (p. 2)
103	Housing Violation Notice No. 87577-15 (p. 1)
104	Housing Violation Notice No. 87477-15 (p. 1, duplicate)
105	Housing Violation Notice No. 96620-1 (duplicate)
106	Housing Violation Notice No. 87477-15 (p. 2, duplicate)
107	Photograph of Melvin Wilson
108	Photograph of Melvin Wilson
109	Certificate of Election of Adjustment of General Applicability filed 6/19/1995
110	Amended Registration Form filed 4/11/1996
111	Certificate of Occupancy dated April 10, 1996
112	Photograph of Tenants' Apartment
113	Photograph of Tenants' Apartment
114	Photograph of Tenants' Apartment
115	Photograph of Tenants' Apartment
116	Photograph of Tenants' Apartment
117	Photograph of Tenants' Apartment
118	Photograph of Rat in Tenants' Apartment
119	Photograph of Tenants' Apartment
120	Photograph of Tenants' Apartment
121	Photograph of Tenants' Apartment
122	Photograph of Tenants' Apartment
123	Photograph of Tenants' Apartment
124	Photograph of Tenants' Apartment
125	Photograph of Tenants' Apartment
126	Photograph of Tenants' Apartment
127	Photograph of Tenants' Apartment

<b>Exhibit No.</b>	<b>Description</b>
128	Photograph of Tenants' Apartment
129	Photograph of Tenants' Apartment
130	Photograph of Tenants' Apartment
131	Photograph of Tenants' Apartment
132	Photograph of Tenants' Apartment
133	Photograph of Tenants' Apartment
134	Photograph of Tenants' Apartment
135	Photograph of Tenants' Apartment
136	Photograph of Tenants' Apartment
137	Photograph of Tenants' Apartment
138	Photograph of Tenants' Apartment

**Appendix B****Housing Code Violations Charged in Notice No. 96620**

<b>Regulation</b>	<b>Description</b>	<b>Proposed Fine</b>
14 DCMR 600.2	Sink drain pipe has leak(s). Secs. 600.2 and 601.5 M.R./cooking room	\$500.00
14 DCMR 904.4	Smoke detector is defective. Sec. 904.4 M.R./hallway to sleeping rooms	2000.00
14 DCMR 706.5	Floor has dampness. Sec. 706.5 and 706.6 M.R. (over flooding conditions; emergency)	100.00

**Housing Code Violations Charged in Notice No. 87577-15**

<b>Regulation</b>	<b>Description</b>	<b>Proposed Fine</b>
14 DCMR 706.5	Floor has dampness. Sec. 706.5 and 706.6 M.R./rear sleeping room	\$500.00
14 DCMR 706.3	Floor has missing part(s). §. 706.3 M.R./rear sleeping room	500.00
14 DCMR 705.3	Window has defective hardware. §. 705.3 M.R./rear sleeping room	500.00
14 DCMR 705.3	Window has defective hardware. §. 705.3 M.R./front sleeping room	500.00
14 DCMR 705.3	Floor has splintered or protruding board(s). Sec. 706.4 M.R./rear sleeping room	100.00
14 DCMR 600.2	Soap dish has broken or missing part(s). Sec. 600.2 M.R./bathroom	500.00
14 DCMR 707.1	Wall has loose or peeling paint or wall covering which shall be removed and surfaces so exposed shall be repainted or recovered. Sec. 707.1 M.R./bathroom	1000.00
14 DCMR 707.1	Ceiling has loose or peeling paint or covering which shall be removed and the surface so exposed shall be repainted or recovered. Sec. 707.1 M.R./bathroom	1000.00
14 DCMR 706.1	Wall has broken or missing tile part(s). Sec. 706.1 M.R./bathroom	100.00
14 DCMR 600.2	Electrical ceiling light fixture is defective. Secs. 600.2 and 605.1 or 605.2 M.R./cooking room	500.00
14 DCMR 706.3	Floor has crack(s). Sec. 706.3 M.R./living room	100.00
14 DCMR 705.1	Window has broken glass. Sec. 705.1 M.R./living room	100.00